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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743
21788	7590	06/28/2011		
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			EXAMINER CARTAGENA, MELVIN A	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 06/28/2011	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/786,732

**Applicant(s)**

HALEY, JAMES E.

**Examiner**

MELVIN CARTAGENA

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5,7 and 9-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7 and 10-37 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 12, 2011 has been entered.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the visual indicator angularly spaced apart 120 Degrees from the air passage and the strand angularly spaced apart 120 or 90 Degrees from the spout must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14-17, 28, 31 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears that the integrally attached cap claimed in claim 14, lines 1 and 2 is a double inclusion of the cap claimed in claim 1, line 25.

It appears that the plurality of sealing rings claimed in claim 36, line 2 are a double inclusion of the sealing ring claimed in claim 35, line 2.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5, 7, 10-16, 18-25, 29, 30, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,637,530 to Jiang in view of US 5,228,603 to Pham et al.

Jiang shows a pouring device as seen in Figs. 1 and 2, for use with a bottle 10 and having a cylindrical body 4 with lower portion with a resilient annular groove 9 extending into the container's neck to affix the pouring device to the container, see Figs. 1 and 4B, an upper portion 3 with a circular cross section and a height of about 0.75 In., a plurality of pour openings defined by an upper part of the body and dividers 5a and 5b which have a cross section of about 0.04 inches, an air passage 8 with a portion being integrally formed with and coextensive with the pouring device, a visual indicator 6 and V-shaped spout 2 with a slope of about 50 degrees and extending about 0.1 inches.

Jiang lacks a filter material and an insertable cap molded with the pouring device and having a cylindrical extent and joined to the device by a strand. Pham shows a spout with a filter material 76 and a cap 152 made of the same material as the spout where the cap is attached to the spout by a flexible strand 312 at about 120 degrees from the spout 305 and has a cylindrical extent 160, see Fig. 8. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Jiang to include a filter made of the same material as the spout, a stand and a cylindrical extent as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process, having a stand to prevent miss placing the cap and a cylindrical extent to completely seal the spout to the atmosphere.

7. Claims 17, 28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,637,530 to Jiang as modified by US 5,228,603 to Pham et al. as applied to claim 1 above, and further in view of US 4,345,704 to Boughton.

The Jiang-Pham combination shows all claimed features as discussed above but is silent about the cross sectional shape of the strand being cylindrical. Boughton shows a stand 37

securing a cap to a pouring spout 28; the strand 37 has a cylindrical cross sectional shape, see Fig. 7. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to secure the cap to the spout using a strand of any cross sectional shape, including cylindrical, since the cross sectional shape of the strand presents no novel or unexpected result over the cross sectional shape used in the references. Use of such a shape in lieu of those used in the references solves no stated problem and would be an obvious matter of design choice within the skill of the art. In re Launder, 42 CCPA 886, 222 F.2d 371, 105 USPQ 446 (1955); Flour City Architectural Metals v. Alpana Aluminum Products, Inc., 454 F. 2d 98, 172 USPQ 341 (8th Cir. 1972); National Connector Corp. v. Malco Manufacturing Co., 392 F.2d 766, 157 USPQ 401 (8th Cir.) cert. denied, 393 U.S. 923, 159 USPQ 799 (1968).

8. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,637,530 to Jiang as modify by US 5,228,603 to Pham et al. as applied to claim 20 above, and further in view of US 3,307,752 to Anderson and US 4,347,946 to Nichols.

The Jiang-Pham combination show all claimed features as discussed above except for the strand positioned at 90 or 120 Degrees from the spout.

Anderson shows a cap 14 connected to a pouring device 16 by a strand 26 secured at about 90 Degrees from the spout 38.

Nichols shows a cap 40 connected to a pouring device 14 by a strand 42 secured at about 120 Degrees from the spout 16.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to secure the strand in the device of the Jiang-Pham combination at 120 or

90 Degrees from the spout in view of Nichols and Anderson to provide the user with easy access to open the container.

9. Claims 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,637,530 to Jiang as modify by US 5,228,603 to Pham et al. as applied to claims 1 and 20 above, and further in view of US 5,417,860 to Kay.

The Jiang-Pham combination show all claimed features as discussed above but is silent about the device being manufacture using an injection molding process and being used for dispensing wines. Kay shows a dispensing spout 10 manufactured using an injection molding process and used for dispensing wines. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to manufacture the pouring spout by injection molding to form the filter and the spout in one step and to use the pouring spout for dispensing wines to filter out cork and other sediments found in wines as taught by Kay.

#### ***Allowable Subject Matter***

10. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

11. Applicant's arguments filed April 12, 2011 have been fully considered but they are not persuasive. In reference to claims 14-17 and 28 rejected under 35 USC § 112, claim 1 positively recites a cap and the same cap is claimed again claimed 14.

In response to applicant's argument that references of Jiang and Pham do not show an filter element coextensive with the air passage, both the device of Jiang and Pham show vent

openings 8 and 48 within a perimeter defined by the respective upper portions of the spouts and next to the pouring openings and the perimeter of the spout encircling the filter element, all the elements are coextensive and form an integral spout.

In response to applicant's arguments that it would be impossible to make a cap capable of sealing the spout of Jiang, a cap can be molded or formed with a complementary shape to that of the pouring spout of Jiang, the element 5a that extends above the other element 5b merely needs to reside inside a recess on the cap when the cap is placed over the spout.

In response to applicant's arguments that Pham lacks a cylindrical longitudinal extent on the cap because the cap has a recess 158, the entire perimeter 160 of the cap is cylindrical and extends into the spout to seal the spout, the recess 158 does not change the external sealing profile of the cap and the recess 158 can be used to admit the element 5a extending past the element 5b in the device of Jiang as discussed above.

In response to applicant's argument that references of Pham or Jiang do not show an upper ring, the cap in the device of Pham shows a cylindrical extend 160 that seals the pouring spout 150 at an upper end, the upper end defines a ring in a horizontal plane on top of the cylinder 162, see Figs. 8 and 9.

In reference to applicant's arguments to claims 38-41, the applicant's response of April 12, 2011, only contained claims 1-3, 5, 7 and 9-37.

Applicant's arguments with respect to claims 17, 28 and 31 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the length of



the cylindrical stand) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on M-TH (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./  
Examiner, Art Unit 3754

/KEVIN P. SHAVER/  
Supervisory Patent Examiner, Art Unit 3754

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